IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

TUESDAY, THE 23RD OCTOBER 2007 / 1ST KARTHIKA 1929

WP(C).No. 31185 of 2007(K)

PETITIONER:

BGR ENERGY SYSTEMS LIMITED,
(FORMERLY GEA ENERGY SYSTEMS INDIA LIMITED),
BUILDING NO.01/662, KANNADIKADAVU, MARADU P.O.,
COCHIN-4, REPRESENTED BY ITS JIMMY JOHN,
LAISON OFFICER/AUTHORISED SIGNATORY.

BY ADV. SRI.A.KUMAR

RESPONDENTS:
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1. **THE COMMERCIAL TAX INSPECTOR,**
   COMMERCIAL TAX CHECK POST, WALAYAR.

2. **COMMERCIAL TAX OFFICER (WC & IT),**
   KVAT SPECIAL CIRCLE, ERNAKULAM.

BY GOVERNMENT PLEADER SRI. K.P.PRADEEP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 22/10/2007, THE COURT ON 23/10/2007 DELIVERED THE FOLLOWING:

KSS

ANTONY DOMINIC, J.

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W.P.(C) No. 31185 OF 2007K
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Dated this the 23rd October, 2007

J U D G M E N T

The prayer in this writ petition is to quash Exts. P9 and P9(a) notices issued under Section 47 of the KVAT Act detaining the goods transported by the petitioner. The irregularities noticed by the respondents have been mentioned in these notices. This includes that from the documents produced it is not clear whether the consignor has got permission for interstate sale of the goods, the details of purchase order, number and date, form of delivery etc. are not mentioned in the accompanying document, mode of payment is not shown, and that the invoice produced is not in accordance with the rules. It is on this basis the genuineness of the documents has been doubted and attempt to evade tax is suspected.

2. It is pointed out by the petitioner that they had an Asphalt Batch Mix Plant and accessories. This plant and accessories including the generator sets were sold to a purchaser at Thane in Maharashtra for Rs.1

crore 15 lakhs. The price was realised and thereafter the plant was dismantled and was loaded into 13 lorries, out of which 10 lorries with the consolidated invoice, as in the cases of lorries covered by Exts. P9 and P9(a), have passed the check post and exited from the State of Kerala without any objection from the department. Referring to Ext. P7, it is stated that being an interstate transaction petitioner sold the machinery against C form and collected the CST at 3% and that the same has been remitted by demand draft to the 3rd respondent. In this context reference is made to Exts. P11 and P11(a) and also Ext. P12, the C form. It is submitted that on the issuance of Exts. P9 and P9 (a), detailed reply has been given by Exts. P10 and P10 (a) as well. According to the petitioner there is absolutely no warrant for detention of the goods, as a substantial portion of which had already been cleared by the respondents themselves.

3. On the merits of the controversy, I am not called upon to examine at least at this stage. The only issue that needs to be addressed is whether the goods should be detained further or whether this can be

ordered to be released protecting the interest of the respondents as well. On going through Exts. P9 and P9 (a) it is seen that the respondents have assessed the total value of the goods at Rs.1 crore 15 lakhs. This obviously is the total value of the plant, its accessories and the generator set and this is evident from Ext. P7 invoice itself. In view of this, the value of the goods as fixed by the respondents would prima facie appear to be unrealistic. Necessarily the security demanded also should be much less.

4. Taking into account the entire circumstances, I am inclined to order release of the goods mentioned in Exts. P9 and P9(a) along with the trucks subject to the following conditions:

That the petitioner shall provide bank guarantee for Rs.5 lakhs each in favour of the respondents for the release of the goods covered by Exts. P9 and P9(a). For the balance amount demanded, the petitioner shall furnish a bond without sureties. Subject to the compliance of the above, the respondents shall release the goods detained as per Exts. P9 and P9(a) along with the trucks. The enquiry pursuant to Exts. P9 and P9(a)

will continue and the parties will be governed by the order to be passed in such enquiry.

ANTONY DOMINIC
JUDGE

jan/-